S.B.CIVIL WRIT PETITION NO.8017/2007
(Smt. Kamlesh Guneja Vs. The State of Rajasthan & ors.)

Date of order : 8th December 2007

HON'BLE MR.JUSTICE DINESH MAHESHWARI

Mr. Parmendra Bohra, for the petitioner.

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BY THE COURT:

Heard learned counsel and perused the material placed on record.

By way of this writ petition, the petitioner, working on the post of Teacher Gr.III seeks to question the order dated 05.10.2007 (Annex.1) whereby she has been transferred from Government Primary School, Netewala, Panchayat Samiti Sriganganagar to Government Primary School, Sanghar, Panchayat Samiti Suratgarh, and the order dated 08.11.2007 (Annex.2) passed by the Rajasthan Civil Services Appellate Tribunal, Jaipur dismissing her appeal (No.2631/2007) against the said transfer order.

The petitioner contends that she has been transferred without any administrative exigency and without application of mind; that the State Government is not competent to pass such transfer order, which could be made only by the Panchayat Samiti concerned on the recommendations of the

District Establishment Committee; and that the Tribunal has erred in summarily rejecting the appeal without considering the substance of the submissions made on behalf of the petitioner.

The present petition remains bereft of substance and the contentions sought to be urged herein deserve to be rejected following detailed orders made by this court on 19th November 2007 in a batch of similar petitions led by CWP No. 7341/2007 (Ram Lal Bishnoi Vs. State of Rajasthan & Ors) and in another case, CWP No.7374/2007 (Meena Sharma Vs. State of Rajasthan & Ors). While rejecting similar nature contentions against competence of the State Government to issue such transfer orders from one Panchayat Samiti to another, this court has observed and held on the operation of the relevant provisions of the Rajasthan Panchayati Raj Act 1994 and Rajasthan Panchayati Raj Rules 1996 that,-

> "Sub-section (8-A) of Section 89 has been inserted by way of amendment to the Act of 1994 with a non obstante clause overriding the provisions of Sub-section (8) of Section 89. Thus, the powers of the State Government to transfer any member of service from one Panchayat Samiti to another within or outside the district, from one Zila Parishad to another, from one Panchayat Samiti to Zila Parishad or from one Zila Parishad to Panchayat Samiti have their overriding effect on any other power of transfer with any other authority. Operation of such wide powers finds incorporation in the scheme of the Rules of 1996 too. The State Government may also stay the operation of, or cancel, any order of transfer made under Sub-section (8) of Section 89 whereby appointment by transfer is envisaged to be made after consultation with Pradhans or Pramukhs of Panchayat Samitis and Zila Parishads, as the case may be, whereto and wherefrom such

transfer is proposed to be made.

A look at the Rules aforesaid and the source of wide powers of State Government that is, Sub-section (8-A) of Section 89 of the Act of 1994, makes it clear that it is within the competence of the State Government, inter alia, to transfer an employee like the petitioner from one Panchayat Samiti to another Panchayat Samiti within the same District or outside the District.

As noticed, wide powers of the State Government flowing from Sub-section (8-A) of Section 89 have their overriding effect and are not whittled down by any other provision in the Act nor could be read circumscribed by any provision in the Rules. The powers of the State Government being untrammelled and unaffected by any other power with any other authority to issue transfer order, this Court is clearly of opinion that the transfer orders of the present nature as issued by the State Government, transferring the employees from one Panchayat Samiti to another Panchayat Samiti, do not suffer from want of authority nor could be said to have been issued in violation of any statutory condition or requirement."

In view of the decision aforesaid, the contentions against competence of the State Government to issue the order of transfer of the petitioner from one Panchayat Samiti to another deserve to be rejected.

The Tribunal has, thus, not committed any error or illegality in rejecting the submissions as made in this case on behalf of the petitioner.

The petition fails and is, therefore, rejected.

MK **(DINESH MAHESHWARI), J.**